

In the High Court of Judicature at Madras

Dated 13.07.2007

Coram

The Honourable Mr.Justice S.R.SINGHARAVELU

Appeal Suit No.329 of 1995

and

Cross Objection No.148 of 1995

S.Leelavathy

..Appellant in A.S.329 of 1995
&Respondent in Cross Objection

..vs..

1. K.M.Subramaniam (died)
2. Dr.S.Sampath Kumar
3. Gowri
4. Madhavakrishnan
5. Srinivasan
6. Thiyagarajan
7. R.Kasthuri
8. R.Indra

(Respondents 2 to 8 brought on record as LRs.of the deceased sole respondent vide Order of Court dt.19.06.2007 made in CMP.Nos.505 to 507 of 2004 & CMP.No.10186 of 2003).. ..Respondents in A.S.329/1995

1. K.M.Subramaniam (died)
2. S.Sampath Kumar
3. R.Madhavakrishnan
4. R.Thiyagarajan
5. R.Srinivasan
6. R.Gowri
7. R.Kasthuri
8. R.Indra

(Cross Objectors 2 to 8 brought on record as LRs.of the deceased sole Cross Objector vide Order of Court dt.19.06.2007 made in CMP.Nos.505 to 507 of 2004 & CMP.No.10186 of 2003).. ..Cross Objectors

Appeal Suit under Section 96 of Civil Procedure Code and Cross Objection under Clause 41 Rule 22 CPC filed against the judgment and decree dated 17.02.1995 made in O.S.No.285 of 1990 on the file of Principal Subordinate Judge, Erode.

For Appellant in : Mr.A.k.Kumaraswamy
AS.329 of 1995 &
For Respondent in Cross Objection

For Respondents in: Mr.V.K.Muthusamy,
AS.329 of 1995 & Senior Counsel for
for Cross Objectors M/s. M.M. Sundaresh
in cross objection Mr.V.Bharathidasan

COMMON JUDGMENT

This appeal arises against the judgment and decree passed by the learned Principal Subordinate Judge at Erode, in O.S.No.285 of 1990 dated 17.02.1995, in decreeing the suit for recovery of possession, past and future damages for use and occupation of the property at the rate of Rs.800/- per month. Defendant is the appellant. The claim made by the plaintiff was at the rate of Rs.1500/- per month and as the decree was passed only for Rs.800/- per month, there is a Cross Objection filed by the plaintiff.

2. The subject matter of the suit was described in the plaint as 'B' schedule and by reading the plaint, one may understand that it is a property described in Ex.A-1 lease deed dated 18.04.1979. That was the lease deed in between the parties in respect of 90 cents of vacant land out of total extent one acre and add. The respondent/ plaintiff is admittedly the owner. The appellant/defendant is the lessee under Ex.A1. The monthly rent was fixed at Rs.400/- per month. The appellant/defendant was also permitted to construct a screen printing factory and accordingly, the appellant had constructed the same and is running the said factory. The lease period mentioned was five years.

3. Although it was stated that the appellant/defendant had surrendered possession on 26.04.1985 and that the respondent/plaintiff had filed a suit in O.S.No.381 of 1985 for permanent injunction in respect of that property, the fact remains that the suit was dismissed on 16.06.1988 for default. Apart from the allegation made by the appellant/defendant that the respondent/plaintiff had forcibly made entry on 05.05.1985, the present possession is admitted with the appellant/defendant. That is why, perhaps, the suit in O.S.No.381 of 1985 was dismissed for

default of the respondent/plaintiff. Since only the appellant/defendant continues in possession, the respondent/plaintiff had chosen to terminate the tenancy through Ex.A2 notice dated 07.09.1988 requiring the appellant to deliver possession by the end of September 1988; that was a 15 days' notice issued in accordance with Section 106 of Transfer of Property Act.

4. Mr.A.K.Kumarasamy, learned counsel appearing for the appellant/defendant submitted that the notice is invalid in the eye of law inasmuch as usage of the premises by the appellant/defendant was admittedly for running a screen printing factory, which is engaged for the process of manufacture of cotton sarees, in which designs are printed in the said factory. Therefore, it was contended that as per Section 106 of the said Act, when the lease of immovable property is for agricultural or manufacturing purposes, the notice of termination should be by a period of six months. In this case, no notice was issued giving six months time. Ex.A2 was only a 15 days' notice. So, it was urged that the notice under Ex.A2 is invalid in the eye of law. Therefore, the learned counsel submitted that the decree of recovery of possession is to be set aside.

5. Mr.V.K.Muthusamy, learned senior counsel appearing for the respondent/plaintiff submitted that the screen printing work done in the factory of the defendant in the suit premises may not be called as a manufacture and, therefore, only 15 days notice given under Ex.A2 is valid. In this connection, reliance was placed upon the decision reported in *Idandas .vs.. Anant Ramchandra* (1982 SC 127), wherein the tests for determining whether a lease is granted for purpose of "manufacturing process" were mentioned as follows:

- "(i) That it must be proved that a certain commodity was produced;
- (ii) That the process of production must involve either labour or machinery;
- (iii) That the end product which comes into existence after the manufacturing process is complete, should have a different name and should be put to a different use. In other words, the commodity should be so transformed as to lose its original character".

That was a case where a lease was granted for running a flour mill wherein wheat was transformed, by manufacturing process which involved both labour and machinery, into flour. Therefore, it was held that all the three tests were fully satisfied and thus the lease was one for manufacturing process which could be terminated only by giving six months' notice under Section 106 of Transfer of Property Act.

6. While discussing the logical aspect of the case, the observation found in *Allenburry Engineers Private Ltd .vs..*

Ramakrishna Dalmia (AIR 1973 SC 425) at page 427 was relied on and which is as follows:

"The word 'manufacture', according to its dictionary meaning, is the making of articles or material (now on large scale) by physical labour or mechanical power (Shorter Oxford English Dictionary, Vol.I 1203). According to the Permanent Edition of Words and Phrases Vol.26, 'manufacture' implies a change but every change is not manufacture and yet every change in an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character or use".

7. Again, the following observation found in Joyanti Hosier Mills ..vs.. Upendra Chandra Das (AIR 1946 Calcutta 317) was also relied upon.

"To manufacture", according to its Dictionary meaning means "to work up materials into forms suitable for use". The word 'material' does not necessarily mean the original raw material, for a finished article may have to go through several manufacturing processes before it is fit and made ready for the market. What is itself a manufactured commodity may constitute a "material" for working it up into a different product. "Thus, for example for the tanner, the material would be the raw hide, but the leather itself a manufactured article would constitute the material for the shoemaker's business, and we cannot say that the shoe-makers are not manufacturers because they do not work on raw hides".

8. In the case of John Augustine Peter Mirande ..vs.. N.Datha Naik (AIR 1971 Mysore 365), the observation was as follows:

"In common parlance 'to manufacture goods' means 'to bring goods into being'. The essence of manufacture is the changing of one object into another for the purpose of making it marketable. Therefore, the proper approach for ascertaining the meaning or expression of the word 'manufacture' is to see in the context in which it is used".

9. The same was relied upon in Meghraj ..vs.. B.Seshagiri Rao (AIR 1977 Karnataka 163), wherein it was observed that to constitute 'manufacture' there must be such transformation in the change out of which a new and different article must emerge having a distinctive name, character or use.

10. Again in UOI ..vs.. J.G.Glass Industries Ltd., (1998(97)ELT

5,11(SC), the Supreme Court has laid down a two-fold test for deciding whether the process is 'manufacture'. First, whether by the said process a different commercial commodity comes into existence or whether the identity of the original commodity ceases to exist. Secondly, whether the commodity which was already in existence will serve no purpose but for the said process. Applying the two-fold test, it was held that printing on bottles does not amount to manufacture.

11. In Oudh Sugar Mills Ltd., ..vs.. Union of India (1982 ELT 937, 939), it was held that,

"The word 'manufacture' is a verb which is generally understood to mean bringing into existence a new substance and not merely to produce some change in substance however minor it may be. The word includes any process incidental or ancillary to the process of a manufactured product.

Manufacture at intermediate stage: It is not correct to state that until a final or last product is made, there will be no manufacture. If in the intermediate stage a distinct product known to the commercial world comes into existence, manufacture does take place".

12. Now, there is no distinct product known to the commercial world that comes into existence because it was the same category of saree either prior to or after the printing. Printing may create a change; but all changes are not new manufactures. There is no occurrence of transformation into usable commodity; because even earlier to printing it was an unprinted but at the same time, usable commodity.

13. Considering the above definitions and circumstances in which the term 'manufacture' was to be understood, it could be said that any product of a fabric because of its undergoing printing may not involve any transformation and therefore, in this case, no manufacture gets itself involved.

14. Above all, it is very much pertinent to note that no proper plea in this regard was taken in the written statement of appellant/defendant. The present argument of the learned counsel for the appellant that as this happens to be squarely a legal problem or question of law, the appellant cannot fail for no plea in that respect, is unacceptable because although it may appear that what is involved is a question of law, for inviting such question on Section 106 of Transfer of Property Act, it must have been pleaded that there is a basic fact in favour of the appellant/defendant and that fact will get Section 106 attracted for the issuance of six months' notice. When such factum is not pleaded, an application of law under Section 106 of the Act may not become necessary. In that

way, the failure to make plea of question of fact in order to apply a law or in order to make it a question of law may go against the appellant. So, viewed in any angle, the notice under Ex.A2 is found valid.

15. The next question that would arise is about the quantum of damages. Learned counsel for the respondent/plaintiff would be entitled for a sum of Rs.1500/- per month for the reason that there is escalation of price mainly in and around Erode and that too, when the suit property is lying in an important locality of Erode and on the bank of Cauvery river. While fixing damages, we cannot ignore terms of agreement between the parties, that was only for Rs.400/- per month. Of course, that was agreed in April 1979. But the trial court has considered all the aspects in its judgment. Here, the respondent/plaintiff claimed a sum of Rs.1500/- per month and for reasons mentioned in the judgment of the lower court, it has fixed at the rate of Rs.800/- per month and the same is confirmed. In view of the above circumstances, I am not inclined to grant any time for vacating the same as pleaded by the learned counsel for the respondent/appellant.

For the reasons stated above, both the Appeal as well as Cross Objection are dismissed. No costs.

Sd/-

Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1.The Principal Subordinate Judge,
Erode.

2. The Record keeper,
VR section, High Court, Madras.

1 cc to Mr.M.M. Sundresh, Sr. 43285

1 cc to Mr.A.K. JKumarasamy, Sr. 43054

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BS (CO)

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